

the said deed to be so worded as apparently to give him equal right with respondent. But she utterly denies that he paid one dollar of the purchase money, the whole being paid by her.

The defence, therefore, is, that the defendant paid the entire purchase money for this parcel of property, and that Forrest, imposing upon her ignorance, fraudulently procured the deed to be so worded as to give him an interest equal to hers. Now, this allegation of the answer is not only unsustained by proof, but the evidence of Prestman, the grantor in the deed, and of Robert A. McAllister one of the justices before whom it was executed, is in pointed opposition to it. Mr. Prestman says, the agreement for the purchase was made by Forrest, the purchase money was paid by him, and that when the last payment was made, which was in the presence of the defendant, witness "asked them how the deed was to be made, and both George Forrest, and Letitia Frazier, conversed on the subject in the presence of witness, and agreed, and so told the witness, that the deed should be made to George Forrest and Letitia Frazier." Witness had the deed drawn and they were both present together at its execution, and signed it, but it is so long ago the witness does not recollect whether it was read to them.

But Mr. McAllister, the magistrate, proves not only that the deed was executed and acknowledged before him, as a magistrate, but that it was fully read and explained by the witness and Mr. Prestman, both to Forrest and Letitia Frazier before its execution; and the witness adds, that he cannot be mistaken on the subject.

In view of this testimony, therefore, in addition to the fact, that the deed was executed, and duly acknowledged, by the vendors and George T. Forrest and Letitia Frazier, and in the absence of all evidence of a direct character to conduct us to a different conclusion, it would seem impossible to sustain the defence; and, therefore, this deed, like that which has been already considered, must be permitted to have its legal effect. I shall, therefore, decree a sale of the property for the purpose of partition.